S/S Millers Island Blvd., 115' and 165' E of the c/l of 8th Street \* ZONING COMMISSIONER (9041 & 9043 Millers Island Blvd.) 7th Councilmanic District

\* OF BALTIMORE COUNTY

\* Case Nos. 95-381-A and 95-382-A Gerald W. and Shelley A. Ruth Petitioners \* \* \* \* \* \* \* \* \* \*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as combined Petitions for Variance for the properties known as 9041 and 9043 Millers Island Boulevard, also known as Lots 323 and 324 of Swan Point, located in the vicinity of Hart/Miller Island and the Chesapeake Bay. The Petitions were filed by the owners of the property, Gerald W. Ruth and his wife, Shelley A. Ruth. The Petitioners seek relief from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front lot width of 50 feet in lieu of the required 55 feet for both lots Lots 323 and 324 for a proposed dwelling. The subject property and relief sought are more particularly described on the site plans submitted and marked into evidence as Petitioner's Exhibits 1, respectively.

Appearing at the public hearing on behalf of the Petitions were Gerald and Shelley Ruth, property owners. There were no Protestants or other interested parties present.

Testimony and evidence offered by the Petitioners was that they own three adjacent lots on Millers Island Boulevard, including the two lots which are the subject of this combined hearing. The Petitioners acquired the three lots, known as Lots 323, 324 and 325 of Swan Point in December, 1994. The lots are located within the Chesapeake Bay Critical Areas across from Hart Island and are presently unimproved. The Petitioners are desirous of developing both Lots 323 and 324 with a two-story, single family dwelling of approximately 700 sq.ft. each, leaving Lot 325 unimproved. Testimony indicated that Swan Point is an old subdivision, apparently having been plotted and recorded in the Land Records of Baltimore County in 1927. The Petitioners testified that most all of the lots are laid out with 50-foot widths. The subject lots are 120 feet deep so that each lot is 6000 sq.ft. in area.

A reading of Section 304 of the B.C.Z.R. shows that same provides relief for property owners with undersized lots or lots of unsufficient width. Specifically, that Section provides that a property owner can develop such a lot with a single family dwelling, if three criteria are satisfied. First, the property owner must show that such lot has been duly recorded, either by deed or in a validly approved subdivision, prior to March 30, 1955. Clearly, the subject lots meet this test. Secondly, all other requirements of the height and area regulations within the B.C.Z.R. must be met. Again, in this instance, the Petitioners have met this test in that no variances are requested. Third, Section 304 provides that the owner of the lot not own sufficient adjoining land to conform to the width and/or area requirements. In this case, the Petitioners do not satisfy this test. As noted above, they own the adjacent unimproved Lot 325. If the three lots were combined, they would contain the required lot widths and could be developed with two homesites. For this reason, relief

In that the sites cannot be developed as of right, the Petitioners request relief pursuant to the provisions of Section 307 of the B.C.Z.R. That Section empowers the Zoning Commissioner to grant variances from the strict application of height and area regulations. However, that Section

under Section 304 of the B.C.Z.R. is not available to the Petitioners.

provides that in order for variance relief to be granted, the Petitioner must demonstrate that a practical difficulty would exist which justifies the requested relief. Moreover, the variance can only be granted if same is within strict harmony of the spirit and intent of the regulations so as not to cause detrimental impact to the surrounding locale. The Court of Special Appeals has recently discussed this regulation in Cromwell v. Ward, 102 Md. App. 691 (1995). Within its discussion, the Court reviewed the prior decisions of the Appellate Courts of this State, including McLean v. Solley, 270 Md. 208 (1973), a leading case.

In support of their request for variance, the Petitioners directly responded to a question asked of them by this Zoning Commissioner that financial considerations merited the request. Specifically, the Petitioners indicated that they felt a better financial return could be made if three homesites were developed on the lots as opposed to two. Although this is no doubt the case, financial considerations are not a sufficient reason to justify the variance. Economic return is not a basis on which to satisfy the practical difficulty test. The practical difficulty must provide a compelling reason for deviation from the zoning regulations. Mere matters of convenience or economics are not a proper basis.

Moreover, the fact that the properties were originally laid out in 1927 does not justify the relief requested. Although the lots were plotted many years ago, building must be in accordance with present regulations. Furthermore, the B.C.Z.R. within Section 304 thereof provide a property owner relief for old established undersized lots. For reasons set forth above, that relief is not available to this Petitioner. Thus, the the relief requested within the Petitions filed must be denied and I shall so Order.

Pursuant to the advertisement, posting of the property, and public hearing held thereon and for the reasons set forth above, the Petitions for Variance filed in the above-captioned matters must be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore day of June, 1995 that the Petitions for Variance filed in Case Nos. 95-381-A and 95-382-A seeking relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a front lot width of 50 feet in lieu of the required 55 feet for both Lots 323 and 324 of Swan Point, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

> Zoning Commissioner for Baltimore County

LES:bjs

**Baltimore County Government** Zoning Commissioner Office of Planning and Zoning

June 9, 1995

Suite 112 Courthouse 400 Washington Avenue Towson, MD 21204

(410) 887-4386

Mr. & Mrs. Gerald W. Ruth 8812 Hinton Avenue Baltimore, Maryland 21219

RE: PETITIONS FOR VARIANCE S/S Millers Island Blvd., 115' and 165' E of the c/l of 8th Street (9041 & 9043 Millers Island Boulevard (Lots 323 & 324 of Swan Point)) 15th Election District - 7th Councilmanic District Case Nos. 95-381-A and 95-382-A Gerald W. and Shelley A. Ruth - Petitioners

Dear Mr. & Mrs. Ruth:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Variance have been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Zoning Commissioner

for Baltimore County

LES:bjs

cc: Chesapeake Bay Critical Areas Commission 45 Calvert Street, 2nd Floor, Annapolis, Md. 21401 DEPRM: People's Counsel

Petition for Variance to the Zoning Committee to the Zoning Commissioner of Baltimore County for the property located at 9041 MILLERS ISLAND BLVD. LOT#323 which is presently zoned DR 5.5 This Petition shall be filed with the Office of Zoning Administration & Development Menagement.

The undersigned, legal owner(s) of the property situate in Baltimore County and 野河 夏姆 美国 in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) To permit a front lot width of 50 feet in lieu of the required 55 feet. of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or (1) MOST EXISTING LOTS IN SUBDIVISION RECORDED AS SO'WIDE BULDABLE LOTS 2 PURCHASED WITH INTENTIONS OF HAVING TWO BULLOING LOTS W/SAME CHARACTERISTICS OF ADJACENT HOME SITES. Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. VWe do solemnly declare and affirm, under the penalties of perjury, that I/we are the GERALD W. RUTH SHELLEY A. RUTH 8812 HINTON AVE. 477-1594 GERALD RUTH

1TEM#376

95-381-A

ZONING DESCRIPTION FOR LOT 328/ 9041 MILLERS ISLAND BLVD.

Beginning at a point on the south side of Millers Island Blvd. which is fifty feet wide at the distance of one hundred and fifteen feet east of the centerline of the intersection of Eight Street which is thirty feet wide. Being lot number 323, in the subdivision of Swan Point as recorded in Baltimore County Plat Book W.H.M. No. 9, folio 4 and 5; containing 6000 square feet. Also known as 9041 Millers Island Blvd. and located in the 15th Election District, 7th Councilmanic District.

95-381-A CERTIFICATE OF POSTING Petitioner: Garald & Sholly Kuth Location of property: 9041 Millow Isls Bluds Location of Signer Facing Too Lway on property being Zonal

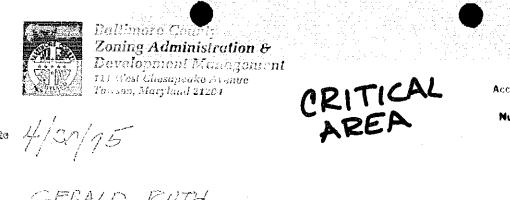
CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was sublished in THE JEFFERSONIAN, a weekly newspaper published weeks, the first publication appearing on  $\underline{5/4}$ , 19  $\underline{45}$ 

The State of the S

Printed with Soybean Ink

17EM#376



CLERALD RUTH 9041 MILLERS ISCAND BLUD

Cashler Validation

0/0 -- VARIANCE - \$ 5000 TOTAL -4 85 00

> <u>- 6340340023410160 - +65,00 - </u> BA COO3:162MO4-21-95 Please Make Checks Payable To: Baltimore County

BALTIMORE COUNTY, MARYLAND

These requests do not comply with Section 304.1C of the Baltimore County Zoning

INTER-OFFICE CORRESPONDENCE

**Baltimore County Government** Office of Zoning Administration and Development Management

111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County. This office will ensure that the legal requirements for posting and

advertising are satisfied. However, the petitioner is responsible for

PAYMENT WILL BE MADE AS FOLLOWS:

the costs associated with these requirements.

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper. NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

Item No.:	376
Petitioner:	GERALD & SHELLEY RUTH
	9041 MILLERS ISLAND BLVD.
PLEASE FORW	ARD ADVERTISING BILL TO:
NAME:	GERALO RUSH
ADDRESS:	8812 HINTON ANE.
	Barro. Ma. 21219

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Agnold Jablon, Director DATE: May 8, 1995

Zoning Advisory Committee Meeting

Insurance Administration's Flood Insurance Study.

FROM: Robert W. Bowling, P.E., Chief Evelopers Engineering Section

for May 8, 1995

Item No. 376

RWB:sw

Zoning Administration and Development Management

The Developers Engineering Section has reviewed

the subject zoning item. This site is located in a 100-year

tidal flood plain. The lowest floor of any building must be

elevated 1 foot above the 100-year frequency tidal elevation

as defined by the Federal Emergency Management Agency, Flood

(Revised 04/09/93)

13

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Baltimore County Governmen Office of Zoning Administration and Development Management

111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

April 28, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-381-A (Item 376) 9041 Millers Island Boulevard (Lot #323) S/S Millers Island Avenue, 115'+/- E of c/l 8th Street 15th Election District - 7th Councilmanic Legal Owner(s): Gerald W. Ruth and Shelley A. Ruth HEARING: FRIDAY, JUNE 2, 1995 at 11:00 a.m. in Room 106, County Office Building.

Variance to permit a front lot width of 50 feet in lieu of the required 55 feet.

cc: Gerald and Shelly Ruth

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE. (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; POR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353. (3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

May 22, 1995

Mr. Arnold Jablon, Director

Development Coordinator, DEPRM

Zoning Advisory Committee Meeting of May 1, 1995

the following comments on the above-referenced zoning item.

The Department of Environmental Protection and Resource Management offers

Development of the property must comply with Chesapeake Bay Critical Area

A non-tidal wetland exists on or near the property line on the

without approval of a Critical Area Administrative Variance.

western border. A minimum 25 foot buffer is required from the outer edge of this non-tidal wetland, thus making this lot undevelopable

Zoning Administration and

Development Management

SUBJECT: Zoning Item #376 - Ruth Property

Environmental Impact Review

9041 Millers Island Blvd.

Regulations by meeting the following conditions:

J. Lawrence Pilson

111 West Chesapeake Avenue

WCR/jw

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Attachment(s)

Mr. and Mrs. Gerald W. Ruth

Baltimore, Maryland 21219

Dear Mr. and Mrs. Ruth:

8812 Hinton Avenue

Towson, MD 21204

O. James Lighthizer Secretary
Hal Kassolf

(410) 887-3353

Ms. Joyce Watson Zoning Administration and Development Management County Office Building Room 109 111 W. Chesapeake Avenue Towson, Maryland 21204

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway

Thank you for the opportunity to review this item.

**Engineering Access Permits** 

ITEM376/PZONE/ZAC1

TO: Arnold Jablon, Director Zoning Administration &

FROM: Pat Keller, Director

DATE: May 4, 1995

INFORMATION:

Item Number:

Petitioner:

Zoning:

Property Size:

Requested Action:

SUMMARY OF RECOMMENDATIONS:

Development Management

Office of Planning and Zoning

/ 376 & 377

Regulations and; therefore, should be denied.

SUBJECT: 9041 & 9043 Millers Island Blvd.

c: Gerald W. Ruth

RUTH/DEPRM/TXTSBP

Administrator

5-2-95

Re: Baltimore County Item No.: 376 (ET)

Baltimore County Government

May 24, 1995

RE: Item No.: 376

The Zoning Advisory Committee (ZAC), which consists of representa-

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties; i.e., zoning commissioner, attorney,

If you need further information or have any questions regarding these

W. Carl Richards, Jr. Zoning Supervisor

tives from Baltimore County approving agencies, has reviewed the plans

submitted with the above referenced petition. Said petition was accepted

for processing by, the Office of Zoning Administration and Development

petitioner, etc. are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not

comments, please do not hesitate to contact the commenting agency or Joyce

Management (ZADM), Development Control Section on April 20, 1995.

informative will be placed in the permanent case file.

Watson in the zoning office (887-3391).

Case No.: 95-381-A

Petitioner: G. W. Ruth, et ux

Office of Zoning Administration and Development Management

Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Very truly yours,

Baltimore County Government Fire Department

700 East Joppa Road Suite 901 Towson, MD 21286-5500

(410) 887-4500

DATE: 05/05/95

moold Jablon 9 rector Zoning Administration and Davelopment Management Baltimore County Office Building Towson, MD 21204 "7 IL STOP-1105

AE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF MAY 1, 1995.

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

369,370,371,372,373,**37**3,375(376)and 377.

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to to corrected or incorporated into the final plans for the property. ). The Fire Marshal's Office hap no comments at this time,

IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 362,363,364,365,366,367,

FVIEWER: LT. ROBERT P. SAUERWALD Fire Marshal Office, PHONE 887-4881, MS-1102F

Printed on Recycled Paper

c: File

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT 05, 392-1 INTER-OFFICE CORRESPONDENCE

Lawrence Schmidt

Zoning Commissioner

J. Lawrence Pilson DEPRM

SUBJECT: Zoning Items #376 and #377

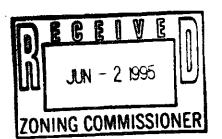
Ruth Property 9041 and 9043 Millers Island Boulevard

Attached is a revised comment from Mr. Keith Kelley in which he wishes to eliminate the original comment stating that there were non-tidal wetlands on or near the site.

JLP:sp

Attachment

SCHMIDT/DEPRM/TXTSBP



DATE: June 1, 1995

BEFORE THE RE: PETITION FOR VARIANCE 9041 Millers Island Boulevard (Lot #323), S/S Millers Island Avenue, 115'+/- E of ZONING COMMISSIONER c/l 8th Street, 15th Election District, OF BALTIMORE COUNTY 7th Councilmanic CASE NO. 95-381-A Gerald W. and Shelley A. Ruth Petitioners

## ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the abovecaptioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zinnerman PETER MAX ZIMMERMAN People's Counsel for Baltimore County Garole S. Demilio CAROLE S. DEMILIO Deputy People's Counsel Room 47, Courthouse 400 Washington Avenue Towson, MD 21204

## CERTIFICATE OF SERVICE

(410) 887-2188

I HEREBY CERTIFY that on this day of May, 1995, a copy of the foregoing Entry of Appearance was mailed to Gerald W. and Shelley A. Ruth, 8812 Hinton Avenue, Baltimore, MD 21219, Petitioners.

Roter May Timmerman

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE Property address: 9041 Millers Island Blvd. Subdivision name: Swan Point plat book: W.H.M. No. 9 folio: 76 Zoning Office Use ONLY! Owner: Mr. and Mrs. Gerald Ruth Date: April 21, 1995 reviewed by | item # | case # Scale: 1"=20' Location Information Lot size: 6000 sq. ft./ .138 acres Councilmatic District: 7 Election District: 15 Public sewer and water exists 1'=200' scale map: SE-7K Lot lies in Chesapeake Bay Critical Area No prior zoning hearings Existing 6' SEWER . EXISTING 8" WATER MILLERS ISLAND BUD! 50'R/~ BIL' STREET 24 PAVING MILLERS ISLAND BLVD. 9043 SUBJECT POPERTY GERALD MR.SMAS. SCALE: 1"= 1000" | MICHAEL SHEWEY GOFF VICINITY MAP SCALE: 1"= 50'

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT INTER-OFFICE CORRESPONDENCE DATE: June 1, 1995 Mr. J. Lawrence Pilson Development Coordination Mr. Keith D. Kelley KK Environmental Impact Review SUBJECT: Zoning Items #376 and #377 Ruth Property 9041 and 9043 Millers Island Boulevard Upon receiving additional information on the above referenced property, I would like to rescind my comment of May 22, 1995 about the existence of non-tidal wetlands on or near the property line. A reinspection on June 1, 1995 revealed that the two (2) lots are "high and dry". The only comment that I have is that impervious surfaces are limited to 25% of each lot (or 1,500 square feet). KDK/tmm

RUTH/DEPRM/WQCBCA

**PETITION PROBLEMS AGENDA OF MAY 1, 1995** 

#363 --- RT

1. No signature for contract purchaser.

#366 --- MJK

- 1. Need authorization for person signing for legal owner.
- 2. Need authorization for person signing for contract purchaser.
- 3. Why isn't "Franklin Avenue" (property location) mentioned in the

#367 --- JCM

Folder not marked critical.

#372 --- RT

1. Only one legal owner signature on back of petition form.

#376 --- RT

Folder not marked critical.

#377 --- RT

1. Folder not marked critical.

